

- Exposing prisoners to danger
- using prisoners as workers.

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UNITED NATIONS WAR CRIMES COMMISSION

Dutch 3.

Trial of Tanabe Koshiro by a
Netherlands Temporary Court Martial
at Macassar, 5th February, 1947

The following translation of the judgment has been made available to the Secretariat by Commander M. W. Mouton, Netherlands Representative on the Commission.

Pro-Justitia.
No. Tkr. 2/1947.

SENTENCE

IN THE NAME OF THE QUEEN!

The Temporary Court-martial at Macassar in the case of the prosecutor *ratione officii*, against:

TANABE KOSHIRO,
aged 28, born at Ihime Ken, Nichiwa Gun, Misaka Mura, Japan, 1st Lieutenant, Japanese Navy, former commandant of the Suikei (coast guard) of the 23rd Special Naval base forces at Macassar, at present detained in the Infantry Barracks, Macassar.

In view of the order dated 23rd January, 1947 issued by the Prosecutor at Macassar committing the accused for trial by the Temporary Court-martial, Macassar, in which order the accused is charged that he:

"a subject of the enemy power Japan, at Macassar about August 1944, therefore in time of war,

- I. unnecessarily exposed about twelve hundred Dutch, American, British and Australian prisoners of war to acts of war;
- II. employed prisoners of war on war-work, because as commanding officer of the 23rd Special Naval Base Force at Macassar he had an ammunition depot built by prisoners of war at a distance of approximately 50 yards from the P.W. camp in the Mariso kampong, Macassar and ordered the depot to be filled with ammunition, which facts constitute a violation of the laws and customs of war."

Seeing that in the above order the accused is commanded to appear before the Temporary Court-martial at Macassar, sitting in the Palace of Justice in the Julianaweg, Macassar, on Wednesday, January, 29th, 1947 at 8 a.m.;

In view of the serving of the aforementioned order dated January 25th, 1947;

In view of the-

In view of the decree dated January 28th 1947, whereby the consideration of the case was postponed until Wednesday February 5th, 1947 at 8 a.m., and the serving of the writ dated February 2nd, 1947;

Considering the demand read out by the Prosecutor and then submitted to the Court-martial, to the effect that the Temporary Court-martial at Macassar declare

TANABE KOSHIRO

guilty of the war crimes:

I. "intentionally and unnecessarily exposing prisoners of war to acts of war;

II. employing prisoners of war on war work ",

and shall sentence him to 5 years imprisonment.

Having heard the accused deny the charge;

In view of what has been dealt with during the sitting of the court as recorded in the proceedings;

In view of the documents in the case insofar as these were used and read out to and seen by the accused, and where necessary explained to him;

In view of what was put forward in accused's defence by the Japanese lawyer IREIE KOCHIRO, chosen by accused as his counsel after permission thereto had been given in a presidential decision dated 26th January, 1947;

Considering that the investigations during the trial have shown that in the month of July or August 1944 a large munition depot was built opposite the P.W. camp at Macassar, which was in the Kampong Mariso on the side nearest the sea, which ammunition depot was situated about 50 yards from the fence surrounding the said camp;

Considering, that this P.W. camp consisted of sleeping and hospital huts, built of bamboo, and that the shelters intended for the more than 1200 Dutch, American, English and Australian P.W.'s offered very insufficient protection against airraids and other acts of war, the said shelters being made out of the rotten trunks of coconut palms and old timber with a covering of thin sheets of old zinc;

Considering, in view of the clear statements made by witnesses Grijzen and Jansen, that sufficient evidence has been produced that the said ammunition depot was built by P.W.'s and further that the order to build was issued by the SUIKEI (coast guard service) as has not only been declared by P.W. witnesses but also stated by the Japanese witnesses NOTOMI, TERAOKA, YOSHIDA and YAMANAKA, respectively chief cook, camp guard, "Kampang-Kashi" (village headman ?) and commandant of the P.W. camp, who were billeted in the house reserved for the camp guards and which was next to the ammunition depot.

Considering that it has not been established with certitude what kind of ammunition was stored in the depot, but that the following statements have been made:

YAMANAKA: Rifle ammunition may have been stored there;

YOSHIDA: I do not know what was stored in it; cases which had been loaded up by SUIKEI-soldiers were certainly brought by lorry;

JANSEN: The Japanese who brought or fetched the ammunition (mostly during the night) belonged to the SUIKEI;

MOOK: I know for a fact that the Japs regularly drove up to the depot and away from it again and I take it that it was full of ammunition;

Considering that the presence of this ammunition depot constituted a double danger for the P.W. camp and the P.W.'s held in it, as well as for those P.W.'s working in the immediate vicinity;

Considering that it has been established during the sitting that as from the middle of 1944 the Allied air activities at Macassar increased and that from the beginning of 1945 the bombing became more frequent and more intensive; also that during the months prior to the capitulation of Japan the Mariso district was several times the immediate target of allied bombers and fighters;

Considering that during the allied air activities the said ammunition depot could have been hit with all those disastrous results as explained in detail by the expert, Hook;

Considering that the presence there of the ammunition depot must have been known to the Allied air-forces through reports made by spies so that the allies must have had the intention of destroying this depot with all the consequences which would follow if this were done, the consequences being equally serious whether in the case of hits or of near-misses; it has also been sufficiently established that by means of ack-ack guns placed round and even in the P.W. camp which had no P.W. or any other markings- the Japanese intentionally incited the allied forces to activity there;

Considering that this danger was not only a possibility but turned out to be a real one as shown by the mention in the report by the camp doctors Bakker, Gans and van Ingen Schenau ("wounds caused by splinters were a regular thing") and as in the list of deceased P.W.'s submitted by Dr. Bakker. ("L.H. Schalker, 1-8-1945, head smashed by bomb-splinter"); while in July 1945 the Pasar Malam and B.O.W.-II field situated nearby, where hundreds of P.W.'s were daily employed, was only missed by some tens of yards;

Considering that where proof as already mentioned has been produced the accused must be held responsible for all the aforementioned facts, and that the building of the ammunition depot originated from the SUIKEI and soldiers belonging to the SUIKEI brought and fetched ammunition to and from it;

Considering that from September 7th, 1943 to February 1945 the accused was commander of the SUIKEI, therefore also at the time the depot was built (July or August 1944); that though there is no direct proof that he gave the order for its construction yet such an order must be deduced from the following evidence:

- a. The P.W.'s employed on the construction were applied for by the SUIKEI (Witnesses Grijzen and Jansen).
- b. Both the officer and all Japanese working on it belonged to the SUIKEI (witness Jansen).
- c. The Japanese fetching or bringing the ammunition (this occurred chiefly at night) belonged to the SUIKEI (witness Jansen).
- d. " I regularly saw soldiers belonging to the SUIKEI come to work and then leave again" (witness Teraoka).

Considering that the accused has advanced that the depot was said to have been built by YAMANO, second in command of the SUIKEI, following orders from the garrison commander and that it was for the RIKEI (Japanese garrison) to which service YAMANO is said to have been detached, which allegation by the accused has been wholly disproved by the statement of witness HORIEKENJU who denied that such a detachment took place but did state that YAMANO acted as instructor for the HEIHO's but that he remained subordinated to the accused; while it is also difficult to accept as plausible that soldiers belonging to the SUIKEI would have assisted in the construction if this was being done entirely on the orders of and for the RIKEI, as the RIKEI at Macassar- as is known to the Court-martial for a fact- consisted of thousands of soldiers and was completely self-supporting so that there was no necessity for the garrison to borrow from the SUIKEI which was only a small service and the latter would

certainly not-

certainly not have lent out the second-in-command, YAMANO, for the construction of an ammunition depot, while it is also difficult to accept that YAMANO, who according to the accused himself continued to live in the SUIKETI encampment (during his so-called detachment) and who used to have meals 3 times a day with the accused, would never have discussed the building of the ammunition depot with him, the accused;

Considering that the accused has gone so far as to pretend that he - for years the head of the coast guard service- did not know where the P.W. camp lay though this was situated about 900 metres further along the same coast and could be seen from accused's house as is known to the Court for a fact;

Considering that according to article 6 of the Rules of Land Warfare work to be given to P.W.'s may in no way be connected with war operations; according to article 31 of the Convention of 1929, work done by P.W.'s may not be directly connected with the war operations, whereas article 7 of that convention says that P.W.'s must be taken outside the fighting-zone and that in any case they may not unnecessarily be subjected to danger;

Considering that the enemy power Japan as co-signatory to the Hague Convention of 18-10-1907 and the ratification of the same, was bound by the articles of the said Rules;

Considering that the Geneva Convention of 1929 was signed by Japan though only ratified as regards the Red Cross, but as the said convention must be regarded as containing generally accepted laws of war in view of the fact that it contains a confirmation of general and already existing conceptions of international law and that the contents of the convention were accepted during and since the drawing-up of same being the prevailing international law to which the belligerent power Japan is also bound, even without ratification;

Considering that though the aforementioned evidence the Court-martial has come to the conclusion that the incriminating acts were committed - constituting violations of the aforementioned rules of international law further specified in the dictum - and that the accused is guilty of same so that he should be declared guilty thereof and therefore punished;

Considering that when fixing the punishment to be imposed on the accused the Court-martial will take into account that the said ammunition depot was not hit and that the accused's object was not to subject the P.W.'s to danger but - albeit in a criminal fashion- to safeguard the combat supplies of his own forces;

In view of the decision taken by the Court-martial in its first session that the accused be kept under arrest during the trial;

In view also of Statute books Nos. 44, 45, 46 and 47/1946

ADMINISTERING THE LAW

IN THE NAME OF THE QUEEN!

declares the accused

TAMBE KOSHIRO,
guilty of the war crimes

- a. unnecessarily subjecting P.O.W.'s to danger
- b. employing P.O.W.'s in an unlawful way.

Sentences him therefore to seven years imprisonment.

Maintains the decision to keep the accused under arrest;

Stipulates that-

Stipulates that the cost of the trial shall be met by the State.

Sentence passed 5th February, 1947 by:

Lt.Col. Dr.N.M.Vollenga, President.

Capt.R.Claproth

Capt.Abdulla daeng Mappoedji) Members, all of the Infantry Reserve.

in the presence of the secretary,

1st Lieut. Dr.J. .Hornung also of the Reserve, and summed up and decreed the same day.

Members:

s/ R.Claproth.

s/ Abdullah daeng Mappoedji.

President:

s/N.M.Vollenga.

Secretary:

s/J.H.Hornung.

Sentence confirmed.

Macassar, 7th March 1947.

The Resident of South Celebes,

s/Dr.C.Lion Cachet.

Pronounced at the public sitting of the Temporary Court-martial on 19th March 1947 by Lt.Col.Dr.N.M.Vollenga, President, in the presence of Capt.J.A.Struyckenkamp, Inf., Capt.Abdullah daeng Mappoedji, Inf.(Res.), members, 1st Lt. Dr.J.H.Hornung, Inf. (res.), Secretary, Dr.S.D.Emanuel, arb., prosecutor, as well as in the presence of the accused and his counsel.

Secretary:

s/Dr. J.H.Hornung.

President:

s/Dr.N.M.Vollenga.